

RULEMAKING NOTICE FORM

Notice Number 2015-100

Rule Number He-M 505

1. Agency Name & Address:

**Dept. of Health & Human Services
Bureau of Developmental Services
State Office Park South
105 Pleasant Street
Concord, NH 03301**

2. RSA Authority:

**RSA 171-A:3;
RSA 171-A:18, I, IV**

3. Federal Authority:

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment X

5. Short Title: **ESTABLISHMENT AND OPERATION OF AREA AGENCIES**

6. (a) Summary of what the rule says and of any proposed amendments:

He-M 505 describes the procedures and criteria for the establishment, designation, and redesignation of area agencies, which are entities approved by the Department to provide services to persons with developmental disabilities or acquired brain disorders. The rule also describes the role and responsibilities of area agencies. Proposed changes to the rule include:

- **Area agency executive directors will be required to have 4 years of experience in developmental services;**
- **The redesignation schedule is amended to account for the 10 year lifespan of the rules; and**
- **Minor changes have been made to the rule in order to conform with current language in other Bureau of Developmental Services rules and rulemaking requirements.**

The current rule is due to expire on June 30, 2015, subject to extension in accordance with RSA 541-A:14-a.

6. (b) Brief description of the groups affected:

Persons and entities affected by these rules include persons with developmental disabilities or acquired brain disorders and their legal representatives, area agencies and their subcontractors, and other persons who contract with consumers to provide services.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State Statutes the Rule Implements
He-M 505.01	RSA 171-A:18; I, II; IV
He-M 505.02	RSA 171-A:18; I, II; IV
He-M 505.03 (Specific paragraphs implementing specific statutes are listed below)	RSA 171-A:18; I, II; IV
He-M 505.03(a)-(ac)	RSA 171-A:18; I, II; IV
He-M 505.03 (o)-(s)	RSA 171-A:18; III, IV
He-M 505.03 (t)-(v)	RSA 171-A:18; V
He-M 505.04	RSA 171-A:18; I, II; IV
He-M 505.05 (Specific paragraphs implementing specific statutes are listed below)	RSA 171-A:18; I, II; IV
He-M 505.05(a)-(e)(3), (e)(5)-(8)	RSA 171-A:18; I, II; IV
He-M 505.05(e)(8)	RSA 171-A:18; VII

He-M 505.05 (e)(4), (f) & (g)	RSA 171-A:18; I, II; IV
He-M 505.06	RSA 171-A:18; I, II; IV
He-M 505.07	RSA 171-A:18; I, II; IV
He-M 505.08	RSA 171-A:18; I, II; IV
He-M 505.09	RSA 171-A:18; I, II; IV
He-M 505.10	RSA 171-A:18; I, II; IV
He-M 505.11	RSA 171-A:18; I, II; IV
He-M 505.12	RSA 171-A:18; I, II; IV
He-M 505.13	RSA 171-A:18; I, II; IV

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Michael Holt** Title: **Rules Coordinator**
Address: **Dept. of Health and Human Services** Phone #: **271-9234**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St. E-mail: michael.holt@dhhs.state.nh.us
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, July 21, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, July 14, 2015 at 1:30 p.m.**

Place: [**DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:100**, dated **06/08/15**

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to existing rules.

- 2. Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):**

- A. To State general or State special funds:**

None.

- B. To State citizens and political subdivisions:**

None.

- C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-M 505, effective 6/30/07 (document #8928), cited and to read as follows:

PART He-M 505 ESTABLISHMENT AND OPERATION OF AREA AGENCIES

Statutory Authority: RSA 171-A:3; 171-A:18, I, IV

He-M 505.01 Purpose. The purpose of these rules is to define the procedures and criteria for the establishment, designation, and redesignation of area agencies, and to define their role and responsibilities.

He-M 505.02 Definitions. The words and phrases used in these rules shall mean the following, except where a different meaning is clearly intended from the context:

(a) “Acquired brain disorder” means a disruption in brain functioning that:

- (1) Is not congenital or caused by birth trauma;
- (2) Presents a severe and life-long disabling condition which significantly impairs a person’s ability to function in society;
- (3) Occurs prior to age 60; ~~and~~
- (4) Is attributable to one or more of the following reasons:
 - a. External trauma to the brain as a result of:
 1. A motor vehicle incident;
 2. A fall;
 3. An assault; or
 4. Another related traumatic incident or occurrence;
 - b. Anoxic or hypoxic injury to the brain such as from:
 1. Cardiopulmonary arrest;
 2. Carbon monoxide poisoning;
 3. Airway obstruction;
 4. Hemorrhage; or
 5. Near drowning;
 - c. Infectious diseases such as encephalitis and meningitis;
 - d. Brain tumor;
 - e. Intracranial surgery;

- f. Cerebrovascular disruption such as a stroke;
- g. Toxic exposure; and
- h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system; and

(5) Is manifested by one or more of the following:

- a. Significant decline in cognitive functioning and ability; ~~and/or~~
- b. Deterioration in:
 - 1. Personality;
 - 2. Impulse control;
 - 3. Judgment;
 - 4. Modulation of mood; or
 - 5. Awareness of deficits.

(b) "Applicant group" means a group of area citizens that has submitted the required materials to the bureau for consideration for designation as an area agency.

(c) "Area" means "area" as defined in RSA 171-A:2, I-a, namely "a geographic region established by rules adopted by the director-commissioner for the purpose of providing services to developmentally disabled persons."

(d) "Area agency" means "area agency" as defined in RSA 171-A:2, I-b, ~~namely "an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the director to provide services to developmentally disabled persons in the area."~~

(e) "Area board" means "area board" as defined in RSA 171-A:2, I-c, namely "the governing body or board of directors of an area agency."

(f) "Area plan" means a document prepared by the area agency that outlines that agency's goals, objectives, and activities pursuant to He-M 505.03 (u).

(g) "Bureau" means the bureau of developmental services of the department of health and human services.

(h) "Bureau administrator" means the chief administrator of the bureau of developmental services.

~~(hi)~~ "Commissioner" means the commissioner of the department of health and human services.

~~(ij)~~ "Conditional redesignation" means a written ruling by the commissioner pursuant to He-M 505.09 that an area agency has partially complied with the redesignation criteria listed in He-M 505.08 and that continued designation is contingent upon fulfilling the requirements established by He-M 505.

~~(jk)~~ "Consumer" means:

- (1) An individual ~~with a developmental disability or acquired brain disorder~~;
- (2) An adult who is the mother, father, brother, sister or spouse of an individual ~~with a developmental disability or acquired brain disorder~~; or
- (3) The legal guardian, other than a corporate or public guardian, of an individual ~~with a developmental disability or acquired brain disorder~~.

(k) “Designation” means a written ruling by the commissioner that an applicant group has been determined to be in compliance with the eligibility requirements set forth in He-M 505.05 and has been approved as the area agency for the area.

(l) “Developmental disability” means “developmental disability” as defined in RSA 171-A:2, V, namely, “a disability:

- (1) Which is attributable to ~~an intellectual disability~~ ~~mental retardation~~, cerebral palsy, epilepsy, autism, or a specific learning disability; or any other condition of an individual found to be closely related to ~~intellectual disability~~ ~~mental retardation~~ as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for ~~mentally retarded individuals~~ persons with an intellectual disability; and
- (2) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe handicap to such individual's ability to function normally in society.”

~~(m) “Director” means the director of the bureau of developmental services.~~

(n) “Generic services” means services available to the general population that are not specifically designed for individuals.

(o) “Guardian” means a person appointed pursuant to RSA 463 or RSA 464-A or the parent of an individual under the age of 18 whose parental rights have not been terminated or limited by law.

(p) “Individual” means a person who has a developmental disability or acquired brain disorder.

(q) “Integrated activity” means personal interaction between persons with and without developmental disabilities or acquired brain disorders that occurs within community settings.

(r) “Integrated setting” means a setting where the majority of persons are ~~non-handicapped~~ without developmental disabilities and the primary activity is neither bureau-funded nor designed primarily for individuals.

(s) “Interim designation” means a written ruling by the commissioner pursuant to He-M 505.05 (e)(8) that an applicant group or other organization has been approved as the interim area agency until a final designation is made by the commissioner.

(t) “Mission” means the stated goals of the service system as established by the bureau or area agencies.

(u) “Region” means, when followed by a Roman numeral, the area agency in the area corresponding to the identified numeral ~~area~~ as defined in He-M 505.02 (b)(c) above.

He-M 505.03 Role and Responsibilities of the Area Agency.

(a) The primary responsibility of the area agency shall be to plan, establish, and maintain a comprehensive service delivery system for all individuals who are residing in the area. The area agency shall plan and provide these services according to rules promulgated by the commissioner.

(b) Pursuant to RSA 171-A:18, I, the area agency shall be the primary recipient of funds provided by the bureau for use in establishing, operating, and administering supports and services and coordinating these with existing generic services on behalf of individuals in the area. The area agency may receive funds from sources other than the bureau to assist it in carrying out its responsibilities.

(c) When possible, the area agency shall utilize generic, integrated services, rather than establish separate services for people with developmental disabilities or acquired brain disorders.

(d) Services provided by, or arranged through, an area agency shall:

(1) Facilitate as much as possible the individual's ability to determine and arrange the services and supports he or she will receive, including the involvement of family and friends as identified by the individual;

(2) Promote the individual's personal development and quality of life in a manner that is determined by the individual;

(3) Meet the individual's needs in personal care, employment, and leisure activities;

(4) Protect the individual's right to freedom from abuse, neglect, ~~and exploitation~~ and other human rights violations;

(5) Promote the individual's health and safety;

(6) Increase the individual's participation in a variety of integrated activities and settings;

(7) Provide opportunities for the individual to exercise personal choice, independence, and autonomy within the bounds of reasonable risks;

(8) Enhance the individual's ability to perform personally meaningful and functional activities;

(9) Assist the individual to acquire and maintain life skills, such as, managing a personal budget, participating in meal preparation, or traveling safely in the community;

(10) Be provided in such a way that the individual is seen as a valued, contributing member of his or her community; and

(11) Be in an environment or setting that promotes the person's freedom of movement, ability to make informed decisions, self-determination, and participation in the community.

(e) The area board shall establish policies and procedures for the governance and administration of the area agency and all service components of the area service delivery system. Policies shall be developed to ensure efficient and effective operation of the local service delivery system and adherence to requirements of state and federal funding sources, the area plan, and rules and contracts established by the

department. Policies shall be developed to ensure that the area agency avoids any conflict of interest and any appearance of conflict of interest in its business relationships.

(f) The department shall assist area agencies in the establishment and provision of services through contract establishment, contract monitoring, consultation, technical assistance, service reviews, staff and board training, coordination with other service systems, and other means.

(g) The area agency shall be incorporated and have an established plan for governance in accordance with He-M 505.03 (h)-(l) below.

(h) The area board shall have responsibility for the entire management and control of the property and affairs of the corporation and have the powers usually vested in the board of directors of a not-for-profit corporation, except as regulated herein. This shall be stated in a set of bylaws maintained and updated by the area board.

(i) The area board shall include in its articles of incorporation and its bylaws a statement that, in the event of dissolution of the area agency or in the event that the agency is no longer designated as an area agency, disposal of all debts and obligations shall be provided for and ownership and possession of all assets and property obtained with funds granted by the department shall revert to the department so that the agency's assets can be redeployed on behalf of ~~individuals~~persons with developmental disabilities or acquired brain disorders.

(j) The area board shall include in its bylaws a provision requiring rotation of area board membership so that 1/4 of the members' terms expire each year. Said rotation shall not result in all of the consumers' terms expiring in the same year.

(k) The area board shall specify in its bylaws that the maximum consecutive period during which a board member may serve as an officer of the board shall not exceed 6 years.

(l) The area board shall specify in its bylaws a procedure by which inactive members are removed from the area board.

(m) The size and composition of the area board shall be as follows:

(1) In all cases, the board of directors shall be composed of an uneven number of persons;

(2) The number of persons serving as members shall be no fewer than 9 and no more than 25;

(3) Consumers shall comprise at least 1/3 of the membership of the area board;

(4) Members shall be representative of the agency's different consumer groups and entire ~~geographic~~geographic area; and

(5) Membership shall be open to all persons who reside in the area except for those excluded as follows:

a. Persons or the spouses of persons who are under financial contract with the area agency or any organization that is a subsidiary or affiliate of the area agency shall not be eligible for membership on the area board;

b. Employees or the spouses of employees of agencies that are under financial contract with the area agency shall not be eligible for membership on the area board;

c. Employees or the spouses of employees of the area agency shall not be eligible for membership on the area board;

d. Employees of the New Hampshire department of health and human services or their spouses shall not be eligible for membership on the area board; and

e. Volunteer board members or the spouses of volunteer board members of agencies or programs under contract with the area agency shall be eligible for membership on the area board but shall comprise no more than 1/3 of the board.

(n) The area board shall fill vacancies by soliciting interested persons to submit applications to the area board. Such solicitation shall be by conducting public meetings, placing public announcements in local media, and by any other means. The area board shall submit to the commissioner those applications that comply with these rules. The commissioner or his or her designee shall review and approve in writing those that comply with ~~He-M 505.03~~ (m) (5) above and He-M 505.05 (d) as qualified to sit on the board.

(o) Pursuant to RSA 171-A:18, III, the area board shall appoint an executive director of the area agency. The executive director shall serve at the pleasure of the area board and as a full-time employee of the agency.

(p) The executive director shall be selected, employed, and supervised by the area board in accordance with a published job description and a competitive application procedure pursuant to the area agency's personnel policies.

~~_____ (q) The executive director shall have, at a minimum, 5 years of administrative experience in human services and 2 years of experience in developmental service programs. All or part of the developmental service experience may have been in the above administrative capacity.~~

_____ (q) The executive director shall have the following experience qualifications, at a minimum:

(1) Five years of administrative experience in human services;

(2) If hired after the 2015 effective date of these rules, 4 years of experience in developmental services programs;

(3) If hired before the 2015 effective date of these rules, 2 years of experience in developmental services programs; and

(4) All or part of the developmental service experience may have been in the above administrative capacity.

(r) The executive director shall demonstrate extensive knowledge of all aspects of the fields of developmental disabilities and acquired brain disorders, including knowledge of:

(1) Administration;

(2) Planning;

(3) Community networking;

(4) Business management; and

(5) Financial and social resources.

(s) The executive director's performance shall be evaluated annually by the area board to ensure that services are provided in accordance with the agency mission, area plan, and the department's rules, contract provisions, and mission.

(t) Pursuant to RSA 171-A:18, V, the area board shall prepare and submit to the bureau an area plan for the provision of services to individuals in the area.

(u) The area plan shall:

(1) Clearly identify the extent to which the area agency has involved its consumers, the ~~regional-area~~ ~~Family Support Council~~ established pursuant to RSA 126-G:4, the general public residing in the area, and generic service agencies in the planning and provision of services for individuals;

(2) Demonstrate that services proposed by the area agency are intended to establish and maintain a comprehensive service delivery system that is:

a. Based on the nature and extent of the service needs of individuals and their care-giving families; and

b. Consistent with RSA 171-A and the agency's and bureau's mission statements and priorities;

(3) Be prepared for a 5-year period that coincides with the redesignation cycle identified in ~~He-M 505-F~~ table 505-2;

(4) Be submitted to the commissioner for approval pursuant to (v) below; and

(5) Be reviewed by the area board every 2 years and may be amended by the area board at any time, with such amendments submitted to the commissioner for approval if:

a. The area board proposes to change, discontinue, or expand services to individuals and their care giving families; or

b. Amendment is necessary to reflect changes in ~~region~~area-wide consumer needs, legislation or in area demographics, vendors, or funding.

(v) The commissioner or his or her designee shall review area plans and amendments to area plans submitted for approval pursuant to (u) (4) and (5) above and approve those plans or amendments that are determined to comply with the agency mission and department rules and applicable state and federal legislation.

(w) The area agency shall be responsible for assuring that appropriate services are provided in accordance with RSA 171-A and the ~~regulations-rules~~ promulgated thereunder, including the following:

(1) Coordination of application for services and eligibility determination process;

(2) Service planning and coordination;

(3) Service agreement development and monitoring;

(4) Provision of services as prescribed in the service agreement;

(5) Monitoring and safeguarding of rights; and

(6) ~~Periodic~~-Annual assessment of satisfaction with, and review and continuous improvement of, quality of services.

(x) The area agency shall utilize all applicable federal, third party, and other public and private sources of funds to carry out its mission and responsibilities.

(y) The area agency shall not enter any merger, sale, affiliation or other substantial change in its corporate identity without the prior approval of the ~~director~~bureau administrator. The ~~director~~bureau administrator shall review any proposed merger, sale, affiliation or other substantial change in the corporate identity of an area agency. The ~~director~~bureau administrator shall approve such proposed changes if ~~the director~~he or she determines that the resulting organization retains sole policy-making authority and responsibility for the ~~region~~area's services and such proposed changes ensure the agency can adequately carry out the responsibilities of an area agency, comply with the rules of the department, and are in the best interest of individuals residing in the ~~region~~area.

(z) The services for which the area agency is responsible may be provided directly by the area agency or the area agency may, pursuant to RSA 171-A:18, II, enter into agreements with persons and organizations for the provision of designated services. The area agency shall not delegate its fiscal management responsibility to any person or organization. Any agreement involving department funds, including Medicaid, entered into by the area agency for the provision of services shall be approved by the commissioner pursuant to He-M 505.03 (ab).

(aa) An area agency planning to enter into agreements pursuant to He-M 505.03 (z) shall:

(1) Notify the commissioner of such plans when the plans involve department-authorized funds; and

(2) Include in said notice a description of services to be provided, payment schedules, and reporting requirements, and assurances that the participants in the agreements agree to comply with all pertinent state and federal requirements.

(ab) The commissioner shall review the information submitted as described in (aa) above and approve those agreements that comply with department rules and applicable state and federal legislation.

(ac) The area agency shall be responsible and accountable for all area agency services whether administered directly by the area agency or provided under contracts with persons or organizations. Monitoring and evaluation of all area agency services, whether administered directly or by contract, shall be conducted by the area agency with its findings and any remedial action taken reported to the area board.

(ad) Services shall be operated in compliance with rules and contract requirements established by the department. Services shall also comply with the goals and priorities of the approved area plan.

(ae) The department shall conduct announced or unannounced reviews of area agencies and audit area agencies at least every 5 years, including all or part of any services, finances, or operations of the area agency, whether operated directly by the area agency or through contracts with persons or organizations.

He-M 505.04 Designation of Area Boundaries. Areas designated for the purpose of providing services to individuals shall be the developmental services areas specified in table 505-1, which sets forth the numerical designation of the areas and lists towns by area:

Table 505-1, INCORPORATED TOWNS AND CITIES BY AREA

Area I

201 Albany	413 Dummer	523 Lincoln	214 Sandwich
202 Bartlett	511 Easton	524 Lisbon	429 Shelburne
504 Benton	206 Eaton	525 Littleton	430 Stark
403 Berlin	207 Effingham	527 Lyman	431 Stewartstown
505 Bethlehem	414 Errol	211 Madison	432 Stratford
203 Brookfield	514 Franconia	422 Milan	540 Sugar Hill
405 Carroll	208 Freedom	428 Millsfield	215 Tamworth
204 Chatham	416 Gorham	529 Monroe	216 Tuftonboro
406 Clarksville	209 Hart's Location	212 Moultonborough	217 Wakefield
407 Colebrook	518 Haverhill	424 Northumberland	536 Warren
408 Columbia	210 Jackson	213 Ossipee	537 Waterville Valley
205 Conway	418 Jefferson	532 Piermont	436 Whitefield
409 Dalton	420 Lancaster	427 Pittsburg	218 Wolfeboro
412 Dixville	521 Landaff	428 Randolph	539 Woodstock

Area II

001 Acworth	510 Dorchester	008 Langdon	531 Orford
509 Canaan	513 Enfield	522 Lebanon	011 Plainfield
002 Charlestown	006 Goshen	009 Lempster	012 Springfield
003 Claremont	515 Grafton	528 Lyme	013 Sunapee
004 Cornish	007 Grantham	010 Newport	014 Unity
005 Croydon	517 Hanover	530 Orange	015 Washington

Area III

501 Alexandria	507 Bristol	516 Groton	533 Plymouth
101 Alton	508 Campton	519 Hebron	534 Rumney
502 Ashland	104 Center Harbor	520 Holderness	110 Sanbornton
102 Barnstead	512 Ellsworth	107 Laconia	535 Thornton
103 Belmont	105 Gilford	108 Meredith	111 Tilton
506 Bridgewater	106 Gilmanton	109 New Hampton	538 Wentworth

Area IV

701 Allenstown	709 Danbury	716 Hopkinton	723 Salisbury
702 Andover	606 Deering	717 Loudon	724 Sutton
703 Boscawen	710 Dunbarton	718 Newbury	725 Warner
704 Bow	711 Epsom	719 New London	629 Weare
705 Bradford	712 Franklin	720 Northfield	726 Webster
706 Canterbury	713 Henniker	721 Pembroke	727 Wilmot
707 Chichester	714 Hill	722 Pittsfield	631 Windsor

708 Concord	612 Hillsborough		
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Area V

301 Alstead	610 Greenville	312 Nelson	317 Sullivan
602 Antrim	611 Hancock	624 New Ipswich	318 Surry
604 Bennington	306 Harrisville	626 Peterborough	319 Swanzey
302 Chesterfield	307 Hinsdale	313 Richmond	628 Temple
303 Dublin	308 Jaffrey	314 Rindge	320 Troy
304 Fitzwilliam	309 Keene	315 Roxbury	321 Walpole
607 Francestown	616 Lyndeborough	627 Sharon	322 Westmoreland
305 Gilsun	310 Marlborough	316 Stoddard	323 Winchester
609 Greenfield	311 Marlow		

Area VI

601 Amherst	614 Hudson	619 Merrimack	622 Nashua
605 Brookline	615 Litchfield	620 Milford	630 Wilton
613 Hollis	618 Mason	621 Mont Vernon	

Area VII

802 Auburn	804 Candia	715 Hooksett	617 Manchester
603 Bedford	608 Goffstown	819 Londonderry	623 New Boston

Area VIII

803 Brentwood	813 Greenland	821 Newfields	829 Portsmouth
807 Deerfield	815 Hampton	822 Newington	830 Raymond
809 East Kingston	816 Hampton Falls	823 Newmarket	831 Rye
810 Epping	817 Kensington	825 North Hampton	834 Seabrook
811 Exeter	818 Kingston	826 Northwood	835 South Hampton
812 Fremont	820 New Castle	827 Nottingham	836 Stratham

Area IX

901 Barrington	905 Lee	908 Milton	911 Rollinsford
902 Dover	906 Madbury	914 New Durham	912 Somersworth
903 Durham	907 Middleton	910 Rochester	913 Strafford
904 Farmington			

Area X

801 Atkinson	808 Derry	625 Pelham	833 Sandown
805 Chester	814 Hampstead	828 Plaistow	837 Windham
806 Danville	824 Newton	832 Salem	

He-M 505.05 Area Agency Designation Procedures and Criteria.

(a) The bureau shall initiate the area agency designation process by publishing a notice in a newspaper or newspapers of ~~regional~~area-wide distribution to convey information about:

- (1) The role and responsibilities of the area agency;
- (2) Membership on the area board; and
- (3) The area agency application and designation process, including the closing date for submission of application materials required by (c) below.

(b) Existing boards of private, non-profit agencies, including community mental health programs approved pursuant to RSA 135-C:10, may apply for designation as an area agency provided that the requirements under RSA 171-A:18, ~~He-M 505.05 (d)~~, and He-M 505.03 (m), and (d) below have been met.

(c) An applicant group shall submit the following area agency application materials to the bureau:

- (1) The name of the applicant group's contact person;
- (2) Written assurances of adherence to these rules;
- (3) A personal data summary for each member of the applicant group, which shall:
 - a. Contain information documenting the person's experience and knowledge as required by (d) below; and
 - b. Demonstrate that the person is not excluded from board membership pursuant to He-M 505.03 (m)(5);
- (4) A description of the unmet service needs of individuals and how the applicant group proposes to meet those service needs; and
- (5) A written proposal which shall include a line item budget and a description of all services to be provided.

(d) The members of the applicant group shall collectively demonstrate, through the submission of personal data summaries as required in (c) (3) above, experience in development and provision of services as well as knowledge of the fiscal, legal, and management issues of services and of the needs and abilities of individuals. The members of the applicant group shall have a demonstrated commitment to community-based, ~~and~~ consumer-directed services and have the capacity to meet the needs of individuals and families.

(e) The designation process shall be as follows:

- (1) The commissioner shall solicit and consider comments from individuals, their families and other stakeholders, such as local human services, educational, or advocacy organizations, in the area as to the ability of the applicant group(s) to carry out its responsibilities as stated in He-M 505.03;
- (2) The commissioner shall review the materials submitted by each applicant group as specified in (c) above and such information as is obtained from comments as provided in (e) (1) above;

- (3) The commissioner shall select for site review the applicant group(s) that appear to be able to comply with all applicable rules;
 - (4) The applicant group that is determined to be able to best comply with the rules shall receive designation as the area agency within 75 days following the date of the application deadline by the commissioner;
 - (5) Designation shall be for a 5 year term, unless revoked or suspended pursuant to He-M 505.06 or He-M 505.07 or unless an agency applies for redesignation in accordance with He-M 505.08;
 - (6) The commissioner shall notify each applicant group that does not receive designation of the reason why the applicant group was not designated;
 - (7) If there is no applicant group selected for designation in the area, the commissioner shall notify each applicant group and request that a second submission of application materials occur within 30 days following notification by the commissioner;
 - (8) If no applicant group in the area receives designation following the second submission of area agency application materials, the commissioner shall reinitiate the application procedure for designation of an area agency and either appoint an interim area agency to operate in the ~~region~~area or designate department staff to temporarily operate area agency services until a new area agency can be designated; and
 - (9) An applicant group denied designation by the commissioner shall have the right to appeal pursuant to He-M 505.11.
- (f) An agency that has had its status as an area agency revoked in accordance with He-M 505.06 shall not be eligible to apply for designation as a successor area agency for 5 years following the date of the revocation.
- (g) In cases where 2 or more areas are consolidated as a result of amendment of He-M 505.04, the commissioner shall select one area agency as the designated area agency for the new consolidated ~~region~~area using the criteria identified in He-M 505.08 (e)-(f). The area agency selected shall be one of the area agencies previously designated to serve the areas being consolidated.

He-M 505.06 Revocation of Designation.

- (a) The commissioner shall monitor the services provided by the area agency to assure that area agency services are operated in accordance with the department's rules, contract provisions, and mission statement, and the area plan. In the event that the commissioner determines that the area agency is not providing such services in accordance with said rules, contract, plan, or mission, the commissioner shall send a written notice to the area agency and area board specifying the nature of the deficiencies and the remedial action that is requested. Such notice shall specify when the remedial action shall be completed. All remedial action shall occur within 60 days of the date of notification.
- (b) In the event that the commissioner determines that the area agency has not complied with the remedial action requested pursuant to (a) above, the commissioner shall revoke the area agency's designation.

(c) The commissioner shall issue written notice of revocation that specifies the reasons for the decision and its effective date. The effective date of the decision shall be at least 90 days from the date of said revocation notice.

(d) An area agency may request a revocation hearing in accordance with He-M 505.11.

(e) In the event that the decision to revoke designation is upheld following a revocation hearing, the commissioner shall initiate the process to select a successor area agency according to He-M 505.05.

He-M 505.07 Suspension.

(a) If the commissioner finds at any time that the health, safety, or welfare of individuals ~~with disabilities~~ or the public is endangered by the continued operation of services by an area agency, the commissioner shall order the immediate suspension of the area agency's designation.

(b) The commissioner or his or her designee shall conduct a hearing on the suspension within 10 days of its issue. Such a hearing shall be conducted pursuant to RSA 541-A:31-36 and He-C 200, except as provided in (f) below.

(c) The department shall send a notice to the area agency specifying the reasons for the suspension and the time and place of the hearing scheduled pursuant to (b) above.

(d) Within 10 days of the hearing, the commissioner shall either revoke or reinstate the area agency's designation.

(e) The area agency may appeal the commissioner's decision to a court of competent jurisdiction.

(f) In the event that the area agency waives its right to a hearing on a decision to suspend designation, or that such decision is upheld following a hearing, the commissioner shall initiate the process to designate a successor area agency pursuant to He-M 505.05.

He-M 505.08 Redesignation.

(a) Each area agency shall apply to the ~~director~~bureau administrator for redesignation every 5 years. If an area agency's current designation is due to expire earlier than the scheduled redesignation in table 505-2, the current designation shall be extended to remain effective until the scheduled redesignation review is completed.

(b) Area agencies shall submit applications for redesignation 90 days prior to the expiration of its current redesignation according to table 505-2 below:

Table 505-2, Redesignation Schedule

<u>2015 and 2020</u>	<u>2016 and 2021</u>	<u>2017 and 2022</u>	<u>2018 and 2023</u>	<u>2019 and 2024</u>
<u>Region III</u>	<u>Region VII</u>	<u>Region IV</u>	<u>Region I</u>	<u>Region II</u>
<u>Region VI</u>	<u>Region X</u>	<u>Region IX</u>	<u>Region VIII</u>	<u>Region V</u>
<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<u>Region-3</u>	<u>Region-7</u>	<u>Region-4</u>	<u>Region-1</u>	<u>Region-2</u>
<u>Region-6</u>	<u>Region-10</u>	<u>Region-9</u>	<u>Region-8</u>	<u>Region-5</u>

(c) The application deadline for redesignation shall be September 30 of each year. Submission of an application pursuant to (b) above shall cause the area agency's current designation to be effective until the commissioner issues a decision pursuant to (e) below.

(d) The commissioner shall consider the area agency's past and current success in providing supports and services to individuals and their families.

(e) An area agency shall be considered successful and operating efficiently when it annually:

(1) Demonstrates, through its services and supports, a commitment to a mission that embraces and emphasizes active community membership and inclusion for persons with disabilities;

(2) Demonstrates, through multiple means, its commitment to individual rights, health promotion, and safety;

(3) Provides individuals and families with information and supports to design and direct their services in accordance with their needs, preferences, and capacities and to decide who will provide them;

(4) Involves those who use its services in regional area planning, system design, and development;

(5) ~~Continuously~~ assesses and continuously improves the quality of its services, and ensures that the recipients of services are satisfied with the services that they receive;

(6) Demonstrates, through its board of directors and management team, effective governance, administration, and oversight of the area agency staff, providers, and, if applicable, subcontract agencies;

(7) Is fiscally sound, manages resources effectively to support its mission, and utilizes generic community resources and proactive supports in assisting people;

(8) Complies, along with its subcontractors, if applicable, with state and federal requirements; and

(9) Achieves the goals identified in its area plan and implements the recommendations made in its previous redesignation report from the department.

(f) Approval of an area agency's request for redesignation shall be granted if, based on the following information, the area agency is found to be in compliance with (e) (1)-(9) above:

(1) Public comments generated by forums with the board of directors, self-advocacy groups, and the family support council regarding the area agency's demonstrated ability to provide local services and supports to individuals and their families;

(2) A comprehensive self-assessment of the area agency's current abilities and past performance;

(3) Input from a wide range of people, agencies, or groups who are either recipients, providers, or people who collaborate in the provision of services and supports;

(4) Documentation pertaining to area agency operations available regionally in the area and at the department; and

(5) Input from department staff who have direct contact with and knowledge of area agency operations.

(g) Department staff designated by the commissioner shall issue a written report and recommend redesignation or conditional redesignation of the area agency.

(h) An area agency shall respond to any corrective action request included in a letter of redesignation within 90 days of the letter.

He-M 505.09 Conditional Redesignation.

(a) If the area agency fails to meet the redesignation criteria specified in He-M 505.08, the commissioner shall redesignate the area agency on a conditional basis for a period of time not to exceed 180 days.

(b) The commissioner shall specify, in writing, conditions and time frames that shall be met by the area agency in order to be eligible for redesignation.

(c) Department staff designated by the ~~director~~bureau administrator shall review and issue a written report regarding the area agency's progress toward compliance with the conditions identified pursuant to He-M 505.09 (b).

(d) At least 2 weeks prior to the expiration of the conditional redesignation, the commissioner shall:

(1) Approve the application for redesignation, effective as of the date of conditional redesignation, if all conditions have been met within the required time frame; or

(2) Deny the application for redesignation if all conditions have not been met within the required time frame.

(e) Any corrective action not fully completed at the time an application for redesignation is approved in accordance with (d) (1) above shall be incorporated in the next area plan developed by the area agency after the redesignation review.

He-M 505.10 Denial of Redesignation.

(a) In those cases where the commissioner denies an application for redesignation, the commissioner shall notify the area agency in writing of the decision. Such a notice shall specify the reasons for the decision and its effective date. The effective date of the decision shall be at least 90 days from the date of the notice of denial. The area agency shall have 20 days following the date of the notice to request a hearing on the denial in accordance with He-M 505.11.

(b) In the event that a hearing request is not made or the denial is upheld following a hearing, the commissioner shall initiate the process to designate a successor area agency as outlined in He-M 505.05.

He-M 505.11 Hearings.

(a) An area agency may request a hearing regarding a denial of designation or redesignation or revocation of designation.

(b) A request for hearing shall be submitted to the commissioner in writing within 20 days following the date of the notification of denial or revocation.

(c) The commissioner or his or her designee shall conduct a hearing in accordance with the procedures set forth in He-C 200 within 30 days of receipt of a request.

(d) Within 10 days of the hearing, the commissioner shall grant or deny an application for designation or redesignation or revoke or reinstate an area agency's designation.

(e) The area agency may appeal the commissioner's decision to a court of competent jurisdiction.

He-M 505.12 Designation of Successor Area Agency.

(a) If the commissioner or designee upholds the denial of designation or redesignation, suspension of designation, or revocation, the commissioner shall initiate the process described in He-M 505.05 to designate a successor area agency.

(b) Pursuant to RSA 171-A:18, VII, the department shall assume all or any part of the responsibilities of the area agency at any time during which an area agency is not designated.

(c) Following the revocation of an area agency's designation, the department shall operate the services directly, enter a contract with the agency for provision of certain services, or enter into contracts with other area agencies to ensure the needs of individuals are met by service providers that have the capacity to provide high quality services pending the selection of a successor area agency.

He-M 505.13 Waivers.

(a) An applicant, area agency, provider agency, individual, guardian, or provider may request a waiver of specific procedures outlined in He-M 505 using the form titled "NH Bureau of Developmental Services Waiver Request" (September 2013 edition). The area agency shall submit the request in writing to the bureau administrator.

(b) A completed waiver request form shall be signed by the area agency's executive director or designee recommending approval of the waiver.

(c) A waiver request shall be submitted to:

Office of Client and Legal Services
Hugh J. Gallen State Office Park
105 Pleasant Street, Main Building
Concord, NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the requesting entity meets the objective or intent of the rule and it:

(1) Does not negatively impact the health or safety of the individual(s); and

(2) Does not affect the quality of services to individuals.

(f) Upon receipt of approval of a waiver request, the requesting entity's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(g) Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in (h) and (j) below.

(h) Those waivers which relate to other issues relative to the health, safety or welfare of individuals that require periodic reassessment shall be effective for the current designation period only.

(i) Any waiver shall end with the closure of the related program or service.

(j) A requesting entity may request a renewal of a waiver from the bureau. Such request shall be made at least 90 days prior to the expiration of a current waiver.

~~(a) An area agency or applicant group may request a waiver of specific procedures outlined in He-M 503 using the form titled "NH Bureau of Developmental Services Waiver Request."~~

~~(b) A waiver request shall be submitted to:~~

- ~~—Office of Client and Legal Services~~
- ~~—State Office Park South~~
- ~~—105 Pleasant Street, Main Building~~
- ~~—Concord, NH 03301~~

~~(c) No provision or procedure prescribed by statute shall be waived.~~

~~(d) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the area agency or applicant group meets the objective or intent of the rule and it:~~

- ~~(1) Does not negatively impact the health or safety of the individual(s); and~~
- ~~(2) Does not affect the quality of services to individuals.~~

~~(e) The determination on the request for a waiver shall be made within 30 days of the receipt of the request.~~

~~(f) Upon receipt of approval of a waiver request, the area agency's or applicant group's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.~~

~~(g) Waivers shall be granted in writing for a specific duration not to exceed 5 years.~~

~~(h) An area agency or applicant group may request a renewal of a waiver from the department. Such request shall be made at least 90 days prior to the expiration of a current waiver.~~

APPENDIX B

<u>RULE</u>	<u>STATUTE IMPLEMENTED</u>
He-M 505.01	RSA 171-A:18; I, II; IV
He-M 505.02	RSA 171-A:18; I, II; IV
He-M 505.03 (Specific paragraphs implementing specific statutes are listed below)	RSA 171-A:18; I, II; IV

He-M 505.03(a)-(ac)	RSA 171-A:18; I, II; IV
He-M 505.03 (o)-(s)	RSA 171-A:18; III, IV
He-M 505.03 (t)-(v)	RSA 171-A:18; V
He-M 505.04	RSA 171-A:18; I, II; IV
He-M 505.05 (Specific paragraphs implementing specific statutes are listed below)	RSA 171-A:18; I, II; IV
He-M 505.05(a)-(e)(3), (e)(5)-(8)	RSA 171-A:18; I, II; IV
He-M 505.05(e)(8)	RSA 171-A:18; VII
He-M 505.05 (e)(4), (f) & (g)	RSA 171-A:18; I, II; IV
He-M 505.06	RSA 171-A:18; I, II; IV
He-M 505.07	RSA 171-A:18; I, II; IV
He-M 505.08	RSA 171-A:18; I, II; IV
He-M 505.09	RSA 171-A:18; I, II; IV
He-M 505.10	RSA 171-A:18; I, II; IV
He-M 505.11	RSA 171-A:18; I, II; IV
He-M 505.12	RSA 171-A:18; I, II; IV
He-M 505.13	RSA 171-A:18; I, II; IV